



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 309-99

3 June 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 June 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 22 July 1971 at age 17. Prior to the offenses for which you received an administrative discharge you were awarded nonjudicial punishment on three occasions and were convicted by a special court-martial. Your offenses were assault, three periods of unauthorized absence totaling less than three days, two instances of failure to go to your place of duty, breaking restriction, and being drunk and incapacitated for duty.

Your military record shows that on 23 April 1973 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for two instances of assault, operating a motor vehicle without a valid license, disobedience and disrespect. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 4 May 1973 and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive

discharge and confinement at hard labor. The undesirable discharge was issued on 14 May 1973.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education, low score on the aptitude test and your contention that alcohol abuse led to your misconduct. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given the record of misconduct and especially your request for discharge to avoid trial for serious offenses. There is no documentation in the record, and you have submitted none, to show that alcohol abuse was a factor in your serious offenses. However, regulations state that alcohol abuse is not an excuse for misconduct and that disciplinary action is appropriate following alcohol related misconduct. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director